

May 8, 2008

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-133

In Regard to the Matter of:
Bayside State Prison
Litigation

DONALD CARROLL,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
THURSDAY, MAY 8, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

May 8, 2008

Page 2

1

2

Transcript of proceedings in the above

3

matter taken by Theresa O. Mastroianni, Certified

4

Court Reporter, license number 30X100085700, and

5

Nolary Public of the State of New Jersey at the

6

United States District Court House, One Gerry Plaza,

7

Camden, New Jersey, 08102, commencing at 9:30 AM.

8

9

10

11

12

13

14

15

16

17

18

19

20

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

21

251 South White Horse Pike

Audubon, New Jersey 08106

22

856-546-1100

23

24

25

May 8, 2008

Page 3

1 A P P E A R A N C E S:

2

3 PAUL J. HIRSH, PC
10 MADISON AVENUE
4 SUITE 300
MORRISTOWN, NEW JERSEY 07960
5 973-290-9555
ATTORNEY FOR THE PLAINTIFFS

6

7

ROSELLI & GRIEDEL, PC
8 BY: MARK ROSELLI, ESQUIRE
- and -

9 BY: JAMES LAZZARO, ESQUIRE

1337 STATE HIGHWAY 33
10 HAMILTON SQUARE, NEW JERSEY 08690
609-586-2257

11 ATTORNEYS FOR THE DEFENDANTS

12

13

14

15

16

17

18

19

20

21

22

23

24

25

May 8, 2008

Page 4

1 JUDGE BISSELL: As we know, I'm not
2 going to paraphrase Rule 52C to any great extent, but
3 that if a party has been fully heard on an issue or
4 claim, and that's the case here because the plaintiff
5 has rested in this matter tried without a jury, this
6 Court may consider the matter in a plenary fashion,
7 among other things, making findings with regard to
8 credibility and the weight of the evidence. I'm not
9 required to treat such a motion with the deference
10 that would be required in the matter of a jury trial.

11 A Court determines -- pardon me, this
12 Master determines that the only reasonable conclusion
13 from all of the evidence before me is that the video
14 in question depicts the day in question on or about
15 August 9th, with which Carroll did not quarrel. When
16 he was extracted from his cell, moved through the
17 infirmary, as it turns out, to -- from F Unit to B
18 Unit, together with this plaintiff's cell mate. The
19 description, of course, of the events that occurred
20 as related on direct examination without the presence
21 of a videotape is, of course, what it is. And the
22 Court refers to the record as generated.

23 However, in my opinion, the videotape
24 completely refutes the version of the offense given
25 by the plaintiff. Obviously, nothing took place on

May 8, 2008

Page 5

1 camera as the plaintiff describes. Plaintiff then in
2 an effort when he was off camera for a matter of
3 seconds, certainly no more than a minute plus, as I
4 noticed the logging on the TV screen, that that is
5 when the beatings and the vilification occurred. And
6 as the witness described, among other things, those
7 comments yelled at the witness were such things as,
8 quote, fag, don't say nothing or I'll fuck you up.
9 Quote, fag, I'm going to tell you to lift a foot.
10 After which he said I didn't tell you which foot to
11 lift. And he presumably was struck again. More such
12 nasty things. Quote, you fucking faggot. Quote,
13 I'll fuck you up, et cetera.

14 This tape had audio as well as video.
15 And it's equally clear from the sequence of events as
16 the plaintiff admitted on cross-examination that he
17 was standing just off camera to what would be the
18 left side of the screen as we look at it. Indeed, I
19 can see a SOG officer on the left side of the screen
20 with his attention in that direction as opposed to
21 the others who were looking at the cell mate, Tyrone.

22 And in that few seconds later when both
23 of them began to be marched out, the plaintiff
24 appeared from the immediate vicinity in the very left
25 of the screen, indicating that the plaintiff was not

May 8, 2008

Page 6

1 far away. Perhaps no more than the width of this
2 bench.

3 Accordingly, given the level of volume
4 at which the tape was played, and the conversational
5 tone of other remarks in the course of it, there is
6 absolutely no way whatsoever that the yelling and
7 screaming and swearing which the plaintiff described
8 could have taken place without being overheard. And
9 it was not, there was none of it.

10 Furthermore, there are other details of
11 the events which just don't jive with the plaintiff's
12 version. Being shackled around the ankles was
13 testified to on direct examination. There was no leg
14 irons used in the course of this transportation.

15 While the clear insistence on direct
16 examination that the plaintiff was never taken to the
17 infirmary, now one could excuse a lapse of
18 recollection there, I gather. But once again, upon
19 being confronted with the videotape, it was obvious
20 that the person was taken to the infirmary.

21 While no video, of course, could supply
22 a microscopic examination, there are no evidences
23 whatsoever in the course of that tape that we're
24 dealing with the result of any beatings or any hard
25 beatings around the head. Among other things, the

May 8, 2008

Page 7

1 curlers remained in place. I don't know enough about
2 that sort of thing to know whether they would likely
3 be dislodged or disrupted by such beatings, but they
4 weren't.

5 The opportunity for us to observe on
6 the tape the inspection taking place at the
7 infirmary, indicating nothing about -- from a visual
8 point of view, the prospects of any beatings around
9 the head.

10 The testimony with regard to being
11 slammed into the podium upon arrival at B Unit
12 completely belied by the tape, which ran in
13 continuous sequence as we could tell from the timing
14 device on it, into an uneventful entry into the B
15 Unit cell.

16 The plaintiff's efforts in the course
17 of the cross-examination then to say, well, you know,
18 maybe all this happened to me while I was in B Unit
19 and I was being transferred from one cell to the
20 other during the whole time I was there, that frankly
21 I can only conclude is an effort to somehow or other
22 salvage this claim in the wake of such strong
23 evidence to the contrary.

24 Accordingly, I make a determination
25 that there was no credible evidence on this record of

May 8, 2008

Page 8

1 any beating or assault or physical activity or even
2 rude language employed against this plaintiff on this
3 occasion, which of course is the essence of his
4 claim.

5 The motion under Rule 52C is granted.

6 The Court will recommend -- this Master will
7 recommend to the district Judge the entry of a
8 judgment of no cause for action.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

May 8, 2008

Page 9

1 C E R T I F I C A T E

2

3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

15

16

17

18

19



Theresa O. Mastroianni, C.S.R.

20

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

21

Certificate No. XI0857

Date: May 8, 2008

22

23

24

25

May 8, 2008

10

<p>A</p> <p>absolutely 6:6 accurate 9:6 action 1:3 8:8 9:11,14 activity 8:1 admitted 5:16 al 1:9 ankles 6:12 appeared 5:24 arrival 7:11 assault 8:1 attention 5:20 attorney 3:5 9:10,12 ATTORNEYS 3:11 audio 5:14 Audubon 2:21 August 4:15 AVENUE 3:3</p>	<p>Certified 2:3,20 9:4 certify 9:5,9 cetera 5:13 Civil 1:3 claim 4:4 7:22 8:4 clear 5:15 6:15 commencing 2:7 comments 5:7 Commission 9:20 completely 4:24 7:12 conclude 7:21 conclusion 4:12 confronted 6:19 consider 4:6 continuous 7:13 contrary 7:23 conversational 6:4 counsel 9:10,12 course 4:19,21 6:5,14,21,23 7:16 8:3 Court 1:2 2:4,6 2:20 4:6,11,22 8:6 credibility 4:8 credible 7:25 cross-examina... 5:16 7:17 curlers 7:1 C.S.R 9:19</p>	<p>describes 5:1 description 4:19 details 6:10 determination 7:24 determines 4:11 4:12 device 7:14 direct 4:20 6:13 6:15 direction 5:20 dislodged 7:3 disrupted 7:3 district 1:2,3 2:6 8:7 DONALD 1:7</p>	<p>far 6:1 fashion 4:6 FAUVER 1:9 financially 9:13 findings 4:7 foot 5:9,10 foregoing 9:5 FORMAROLI 2:20 forth 9:8 frankly 7:20 fuck 5:8,13 fucking 5:12 fully 4:3 FURTHER 9:9 Furthermore 6:10</p>	<p>indicating 5:25 7:7 infirmary 4:17 6:17,20 7:7 insistence 6:15 inspection 7:6 interested 9:13 irons 6:14 issue 4:3</p>
<p>B</p> <p>B 4:17 7:11,14 7:18 Bayside 1:6 beating 8:1 beatings 5:5 6:24,25 7:3,8 began 5:23 belied 7:12 bench 6:2 BISSELL 1:19 4:1</p>	<p>C</p> <p>C 3:1 9:1,1 Camden 2:7 camera 5:1,2,17 Carroll 1:7 4:15 case 4:4 cause 8:8 cell 4:16,18 5:21 7:15,19 certainly 5:3 Certificate 9:21</p>	<p>E</p> <p>E 3:1,1 9:1,1 effort 5:2 7:21 efforts 7:16 employed 8:2 employee 9:10 9:12 entry 7:14 8:7 equally 5:15 ESQUIRE 3:8,9 essence 8:3 et 1:9 5:13 events 4:19 5:15 6:11 evidence 4:8,13 7:23,25 evidences 6:22 examination 4:20 6:13,16 6:22 excuse 6:17 Expires 9:20 extent 4:2 extracted 4:16</p>	<p>G</p> <p>gather 6:18 generated 4:22 Gerry 2:6 given 4:24 6:3 going 4:2 5:9 granted 8:5 great 4:2 GRIEGEL 3:7</p>	<p>J</p> <p>J 3:3 JAMES 3:9 Jersey 1:3 2:5,7 2:21 3:4,10 9:5 9:20 jive 6:11 JOHN 1:19 Judge 4:1 8:7 judgment 8:8 jury 4:5,10</p>
<p>C</p> <p>C 3:1 9:1,1 Camden 2:7 camera 5:1,2,17 Carroll 1:7 4:15 case 4:4 cause 8:8 cell 4:16,18 5:21 7:15,19 certainly 5:3 Certificate 9:21</p>	<p>D</p> <p>date 9:8,21 day 4:14 dealing 6:24 Defendants 1:10 3:11 deference 4:9 depicts 4:14 described 5:6 6:7</p>	<p>F</p> <p>F 4:17 9:1 fag 5:8,9 faggot 5:12</p>	<p>H</p> <p>H 1:9 HAMILTON 3:10 happened 7:18 hard 6:24 head 6:25 7:9 heard 4:3 hercinbefore 9:8 HIGHWAY 3:9 HIRSH 3:3 HONORABLE 1:19 Horse 2:21 House 2:6</p>	<p>K</p> <p>know 4:1 7:1,2 7:17</p> <p>L</p> <p>language 8:2 lapse 6:17 LAZZARO 3:9 left 5:18,19,24 leg 6:13 level 6:3 license 2:4 lift 5:9,11 Litigation 1:6 logging 5:4 look 5:18 looking 5:21</p>
			<p>I</p> <p>immediate 5:24</p>	<p>M</p> <p>MADISON 3:3 making 4:7 marched 5:23 MARK 3:8 Master 1:19</p>

May 8, 2008

11

4:12 8:6 Mastroianni 2:3 2:20 9:3,19 mate 4:18 5:21 matter 1:5 2:3 4:5,6,10 5:2 microscopic 6:22 minute 5:3 MORRISTO... 3:4 motion 4:9 8:5 moved 4:16	parties 9:11 party 4:3 PAUL 3:3 PC 3:3,7 person 6:20 physical 8:1 Pike 2:21 place 4:25 6:8 7:1,6 9:8 plaintiff 4:4,25 5:1,1,16,23,25 6:7,16 8:2 PLAINTIFFS 3:5 plaintiff's 4:18 6:11 7:16 played 6:4 Plaza 2:6 plenary 4:6 plus 5:3 podium 7:11 point 7:8 presence 4:20 presumably 5:11 Prison 1:6 proceedings 2:2 prospects 7:8 Public 2:5 9:3,20	regard 1:5 4:7 7:10 related 4:20 relative 9:10,12 remained 7:1 remarks 6:5 Reporter 2:4 9:4 Reporting 2:20 required 4:9,10 rested 4:5 result 6:24 ROSELLI 3:7,8 rude 8:2 Rule 4:2 8:5	T T 9:1,1 taken 2:3 6:8,16 6:20 9:7 tape 5:14 6:4,23 7:6,12 tell 5:9,10 7:13 testified 6:13 testimony 7:10 9:6 Theresa 2:3 9:3 9:19 thing 7:2 things 4:7 5:6,7 5:12 6:25 THURSDAY 1:15 time 7:20 9:7 timing 7:13 tone 6:5 transcript 2:2 9:6 transferred 7:19 transportation 6:14 treat 4:9 trial 4:10 tried 4:5 true 9:6 turns 4:17 TV 5:4 Tyrone 5:21	2:20 videotape 4:21 4:23 6:19 view 7:8 vilification 5:5 visual 7:7 volume 6:3 vs 1:8
N N 3:1 nasty 5:12 neither 9:9,11 never 6:16 New 1:3 2:5,7,21 3:4,10 9:4,20 Notary 2:5 9:3 9:20 noticed 5:4 number 2:4	Q quarrel 4:15 question 4:14,14 quote 5:8,9,12 5:12	S S 3:1 salvage 7:22 screaming 6:7 screen 5:4,18,19 5:25 seconds 5:3,22 see 5:19 sequence 5:15 7:13 set 9:8 shackled 6:12 Shorthand 9:4 side 5:18,19 slammed 7:11 SOG 5:19 sort 7:2 South 2:21 SPECIAL 1:19 SQUARE 3:10 standing 5:17 State 1:6 2:5 3:9 9:4,20 States 1:2 2:6 stenographica... 9:7 strong 7:22 struck 5:11 SUITE 3:4 supply 6:21 swearing 6:7	U uneventful 7:14 Unit 4:17,18 7:11,15,18 United 1:2 2:6	W W 1:19 wake 7:22 way 6:6 weight 4:8 weren't 7:4 we're 6:23 whatsoever 6:6 6:23 White 2:21 width 6:1 WILLIAM 1:9 witness 5:6,7
O O 2:3 9:3,19 observe 7:5 obvious 6:19 Obviously 4:25 occasion 8:3 occurred 4:19 5:5 offense 4:24 officer 5:19 once 6:18 opinion 4:23 opportunity 7:5 opposed 5:20 overheard 6:8	R R 3:1 9:1 ran 7:12 reasonable 4:12 recollection 6:18 recommend 8:6 8:7 record 4:22 7:25 refers 4:22 refutes 4:24	V version 4:24 6:12 vicinity 5:24 video 4:13 5:14 6:21 Videoconfere...	X XI0857 9:21	Y yelled 5:7 yelling 6:6
P P 3:1,1 paraphrase 4:2 pardon 4:11			0 07960 3:4 08-133 1:3 08102 2:7 08106 2:21 08690 3:10	1 10 3:3 1337 3:9
			2 2008 1:15 9:21 2010 9:20 251 2:21	3

May 8, 2008

12

30X100085700 2:4 300 3:4 33 3:9 5 59:20 52C 4:2 8:5 6 609-586-2257 3:10 8 8 1:15 9:21 856-546-1100 2:22 9 9th 4:15 9:30 2:7 973-290-9555 3:5				
---	--	--	--	--